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December 9, 2022

The Honorable Vera M. Scanlon
United States Magistrate Judge
United States District Court for the
Eastern District of New York
United States Courthouse
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *Capobianco, et al., v. City of New York, et al.*, 21-CV-06125 (LDH) (VMS)

Dear Magistrate Judge Scanlon,

I am one of the lawyers for the plaintiffs in this case. Plaintiffs are unable to submit a joint letter with defendants by today's deadline regarding a schedule for expert inspections of the City's Central Booking facilities and expert discovery. Due to no fault on the part of plaintiffs, the Court has already granted the parties two consent extensions for the joint letter.

In my December 1, 2022 letter to the Court (attached), seeking a second consent extension of the joint letter, I wrote in relevant part:

My co-counsel, Scott Korenbaum, spoke with defense counsel Mark Toews today, after a prior Zoom discussion, about settlement, but I have nothing positive yet to report in terms of a meeting of the minds. Mr. Korenbaum and I met with plaintiffs' expert, a former high-level corrections official, by Zoom last week and learned when the expert can fly to NY for site visits and **what he needs for a proper expert report. Since we have not yet received policy and practice documents for the operation of the City's Central Booking facilities, assuming the documents even exist, our expert needs to be in each jail long enough to get a sense of the operation. The expert was also not allowed to speak with staff or prisoners when he visited Brooklyn and Staten Island Central Booking previously, but needs to do so, and this may still be an issue with the defendants. Also, because of the absence of substantive documents so far, our expert needs to review the depositions of high-level officials involved in the operation of each Central Booking**

facility in the City, including the relevant hierarchy at One Police Plaza, so these depositions need to be scheduled and taken promptly. This paragraph is comprised of plaintiffs' position only. I do not know defense counsels' full position on the above issues.

Since the filing of my letter on December 1, 2022, defense counsels have not responded to me concerning the above issues, despite approximately two emails I sent after the filing of my letter. I finally heard back from defense counsels last night in an email sent at 10:13 p.m., but these issues were never addressed. I responded to defense counsels today at 5:48 a.m., stating, in sum and substance, that we have not agreed upon the scope and the length of the inspections, and access to staff and detainees, and that it was meaningless that defense counsels indicated that the expert may conduct visits in February and that the reports be due on designated dates thereafter. I still have not received the necessary responsive information from defense counsels as of the writing of this letter.

Finally, despite discovery requests, several subsequent communications, a discussion at the Court ordered video meet and confer, and a discussion at the last telephone conference with Your Honor, defendants still have not provided plaintiffs with a complete list of the officials responsible for the operation of each of the City's Central Booking facilities and the conditions of confinement and Covid-19 protections in the jails. We wish to add these officials as defendants and provide their depositions to our expert for his report. We only were given the names of some of the officials by defense counsels after the conference with Your Honor, and I followed up immediately that the list was incomplete. I was told that the list would be supplemented. I asked for the date that the list would be supplemented, but was not given one.

On the same topic, we recently received documents that Magistrate Judge Pollak ordered defendants to produce over their objection in *Brennan/Aboubakar*, consolidated cases which concern the conditions in Brooklyn Central Booking. These documents seem to establish that the Mayor's Office and the Department of Correction have a role in the operation and conditions of Central Booking, and that the Department of Correction may be the entity that operates Manhattan Central Booking. Again, we have no names. Defense counsels have not even informed me of the names of the all of the City agencies involved, which may include health officials given the Covid-19 aspect of this case.

Respectfully,

Richard Cardinale

Richard Cardinale

Copy: All counsel